

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON**

LOU COLASANTI,

Plaintiff,

v.

**CITY OF PORTLAND and STATE OF
OREGON,**

Defendants.

Case No. 3:19-cv-00443-YY

OPINION AND ORDER

IMMERGUT, District Judge.

Plaintiff Lou Colasanti brings this action against the City of Portland (the “City”) and the State of Oregon (the “State”) alleging several claims of unlawful discrimination under federal and state law. Magistrate Judge Youlee Yim You issued her Findings and Recommendation (“F&R”) on September 23, 2019, recommending that the City’s Motion to Dismiss, ECF 7, and the State’s Motion to Dismiss, ECF 12, be granted, but Plaintiff be granted leave to amend his complaint.

The City requests that this Court dismiss Plaintiff’s retaliation claims under the Americans with Disabilities Act (“ADA”) and Oregon law, Or. Rev. Stat. § 659A.109,

respectively claim two and part of claim three in the First Amended Complaint (“FAC”). ECF 3.

The City further requests that this Court dismiss Plaintiff’s prayer for compensatory and noneconomic damages under that claim. ECF 7 at 9. The State requests that this Court dismiss all claims against it—claims four, five, and six in the FAC. ECF 12.

Plaintiff timely filed objections to the F&R. ECF 32. This Court therefore reviewed *de novo* the portions of the F&R to which Plaintiff objected. For the following reasons, this Court adopts Magistrate Judge You’s F&R in its entirety.

LEGAL STANDARD

Under the Federal Magistrates Act (“Act”), as amended, the court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.”

[28 U.S.C. § 636\(b\)\(1\)](#). If a party files objections to a magistrate judge’s F&R, “the court shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” *Id.* But the court is not required to review, *de novo* or under any other standard, the factual or legal conclusions of the F&R to which no objections are addressed. *See Thomas v. Arn*, 474 U.S. 140, 149–50 (1985); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc). Indeed, the Advisory Committee Notes to [Fed. R. Civ. P. 72\(b\)](#) recommend that “[w]hen no timely objection is filed,” the Court review the magistrate judge’s recommendations for “clear error on the face of the record.” Nevertheless, the Act “does not preclude further review by the district judge, *sua sponte*” whether *de novo* or under another standard. *Thomas*, 474 U.S. at 154.

DISCUSSION

Plaintiff objects to the portions of Magistrate Judge You’s recommendation finding that he failed to adequately plead that (1) he engaged in the protected activity of requesting an

accommodation from the City; and (2) the State was on notice that he desired accommodations for written tests. Each objection is addressed in turn.

I. Requesting an Accommodation from the City

In her F&R, Magistrate Judge You recommends that this Court dismiss Plaintiff's claims against the City for retaliation under the ADA (claim two) and Oregon law (part of claim three), finding Plaintiff failed to sufficiently allege that he engaged in a protected activity. ECF 27 at 10–12. Plaintiff argues that he adequately plead that he engaged in the protected activity of requesting accommodations. ECF 32 at 2–4. This Court has reviewed this portion of the F&R and agrees that Plaintiff has not alleged that he made a specific, timely request for accommodation. This Court therefore adopts this portion of the F&R.

II. Providing Notice to the State

Plaintiff next objects to Magistrate Judge You's recommendation that this Court dismiss the discrimination claims against the State for violations of Title II of the ADA, section 504 of the Rehabilitation Act, and Oregon state law, Or. Rev. Stat. § 659A.142. Magistrate Judge You concluded that each of these claims should be dismissed because Plaintiff failed to allege that the State was on notice that he was requesting accommodations for the purpose of the written midterm. ECF 27 at 18. The Court has reviewed this portion of the F&R and agrees with Magistrate Judge You's analysis. Accordingly, this Court adopts this portion of the F&R.

There are several portions of the F&R to which no objections have been made. This Court reviews those matters for clear error on the face of the record as recommended by the Advisory Committee. Finding no apparent error, this Court adopts and incorporates those portions into this opinion.

CONCLUSION

This Court ADOPTS Magistrate Judge You's Findings and Recommendation. ECF 27.

The City of Portland's Motion to Dismiss is GRANTED. Plaintiff's claims against the City for retaliation, claim two (ADA) and part of claim three (Or. Rev. Stat. § 659A.109), are dismissed without prejudice. The City of Portland's motion to dismiss Plaintiff's prayer for compensatory and noneconomic damages under the second claim for relief is GRANTED. The State of Oregon's Motion to Dismiss GRANTED. Claims three, four, and five are dismissed without prejudice.

IT IS SO ORDERED.

DATED this 28th day of February, 2020.

/s/ Karin J. Immergut
Karin J. Immergut
United States District Judge